

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF OAK HAVEN WATER)
AND SEWER COMPANY, INC.)
_____))
ALLEGED VIOLATION OF KRS CHAPTER 278)

CASE NO.
91-075

O R D E R

On March 11, 1991, Oak Haven Water and Sewer Company, Inc. ("Oak Haven") was directed by the Commission to show cause why it should not be penalized pursuant to KRS 278.990 for failing to maintain and operate its water distribution and sewer treatment facilities in accordance with accepted good engineering practices as required by Commission statutes and regulations. The hearing to show cause was held on June 18, 1991.

FINDINGS OF FACT

Oak Haven was incorporated in Kentucky on June 15, 1971 by Marvin E. Conrad who is president of the corporation. The officers of the corporation are Mr. Conrad and Lorraine M. Conrad, vice-president and secretary; Keith Hendricks is the certified operator of the sewer portion of Oak Haven. Oak Haven currently consists of a water distribution system and wastewater treatment plant and collection system. There are approximately 42 customers on the water system and 27 customers on the sewer system.

Commission utility investigators inspected Oak Haven for compliance with Commission statutes and regulations on August 21, 1990 and again on January 4, 1991. Oak Haven was cited in the August 21, 1990 inspection report for 12 deficiencies relating to the water system and four deficiencies for the sewer portion of the system. The report was sent to Oak Haven and Oak Haven was directed to respond to the deficiencies noted in the report no later than September 28, 1990. Commission records reflect no response was received from Oak Haven to the August report.

Oak Haven was reinspected on January 4, 1991 and that inspection reflects none of the violations noted in the August 1990 report had been corrected. By a March 11, 1991 Commission Order an informal conference was scheduled for April 22, 1991. There was no representative from Oak Haven present at the informal conference. However, on March 21, 1991 Oak Haven filed a response related to the deficiencies noted in the January 1991 report. Although each deficiency listed in the January 1991 report was addressed, Oak Haven had not satisfactorily proven the deficiencies were corrected. On May 14, 1991, the Commission ordered Oak Haven to appear at a hearing scheduled for June 18, 1991 to show cause why penalties should not be assessed under KRS 278.990 for its failure to maintain its water and sewer operations in accordance with Commission regulations and for its failure to comply with an Order of the Commission directing Oak Haven to appear at the informal conference.

At the June 18, 1991 hearing, Oak Haven was represented by Ms. Lorraine Conrad, vice president and co-owner of all the shares

of stock in the corporation.¹ Ms. Conrad testified she was not as familiar with the operations of the company as her husband, but that he was unavailable for the hearing.² Ms. Conrad proceeded to address the deficiencies set forth in the January 1991 inspection report and how those deficiencies were being corrected. On cross-examination it was apparent the steps being taken by Oak Haven fell short of bringing them into compliance.

When Ms. Conrad was questioned about Oak Haven's failure to respond to the August 1990 inspection report, she really had no excuse.³

CONCLUSION OF LAW

Four of the 16 deficiencies cited in the January 1991 inspection report pertain to 807 KAR 5:071, Section 7, which requires that sewage treatment facilities be "operated in accordance with accepted good engineering practices." Another deficiency relates to 807 KAR 5:011, Section 12, which requires the utility to "provide a suitable table or desk in its office and place of business" to the public for inspection of its tariffs, rules and regulations, and statutes. Three of the deficiencies relate to water, specifically, 807 KAR 5:066, Sections 5, 6 and 16 which pertain to continuity of service, pressure requirements for water distribution systems, and accuracy requirements of water meters. The remaining six deficiencies relate to inadequate meter

¹ Transcript of Evidence ("T.E."), page 32.

² T.E., page 32.

³ T.E., page 44.

testing and record keeping. 807 KAR 5:006, Sections 3, 13, 15, 21, 22 and 23 require the keeping of periodic reports, meter test requirements, meter test records, complaint tests, filing of and adherence to a safety program, and a program for routine inspection of systems.

The issue before the Commission is whether Oak Haven has violated Commission regulations and, if so, should it be penalized pursuant to KRS 278.990 for failing to comply with the above-mentioned regulations.

KRS 278.990(1) provides in pertinent part as follows:

Any officer, agent or employee of a utility, as defined by KRS 278.010, and any other person who willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, . . . shall be subject to either a civil penalty to be assessed by the commission not to exceed two thousand five hundred dollars (\$2,500) for each offense or a criminal penalty of imprisonment for not less than six (6) months, or both. If any utility willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, . . . the utility shall be subject to a civil penalty to be assessed by the commission for each offense not less than twenty-five dollars (\$25) nor more than two thousand five hundred dollars (\$2,500). Each act, omission or failure by an officer, agent or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission or failure of the utility.

All sixteen deficiencies listed in the January 4, 1991 inspection report were repeat violations cited in the August 1990 inspection report for which no response was ever received. The failure of Oak Haven to see that the violations were corrected and to appear at the April 22, 1991 informal conference as ordered by the Commission is deemed to be willful and punishable under KRS

278.990. Therefore, a penalty of not less than \$25, nor more than \$2,500 is required to be assessed against Oak Haven.

The Commission finds that Oak Haven is in violation of 807 KAR 5:071, Section 7; 807 KAR 5:011, Section 12; and 807 KAR 5:006, Sections 3, 13, 15, 21, 22 and 23. Oak Haven should correct all deficiencies cited in the January 4, 1991 inspection report. The Commission further finds a penalty of \$900 is appropriate under the circumstances.

This Commission being otherwise sufficiently advised, IT IS HEREBY ORDERED that:

1. Oak Haven is hereby assessed a penalty of \$500 of which \$350 is assessed for willful failure to comply with the aforementioned regulations and \$150 for failure to appear at the April 22, 1991 informal conference as ordered by the Commission on March 11, 1991. Payment shall be made within 30 days of the date of this Order by certified check or money order made payable to the Treasurer, Commonwealth of Kentucky, and mailed to the Office of General Counsel, Public Service Commission, P. O. Box 615, Frankfort, Kentucky 40602.

2. Oak Haven shall cause to be corrected, within 30 days from the date of this Order, all deficiencies cited in the January 4, 1991 inspection report and shall notify the Commission, in writing, once all deficiencies are corrected along with copies of the following:

- a. Item 2 - An example copy of meter test and history cards being used.
- b. Item 4 - A copy of Oak Haven's Safety Program.

- c. Item 5 - A copy of Oak Haven's inspection procedure.
- d. Item 9 - A copy of pressure charts taken from Oak Haven's pressure recorder.
- e. Item 11 - Filing of Oak Haven's "quarterly" periodic report form for start of testing to current quarter.

Done at Frankfort, Kentucky, this 5th day of August, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:



Executive Director